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*Chairman*: Mr. Tulbure ..... (Moldova)

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Agenda item 80: Criminal accountability of United Nations officials and experts on mission

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*The meeting was called to order at 10.10 a.m.*

**Agenda item 80: Criminal accountability of United Nations officials and experts on mission** (A/60/980, A/62/54, A/62/329)

1. **Ms. Telalian** (Greece), speaking as Chairperson of the Ad Hoc Committee on criminal accountability of United Nations officials and experts on mission, introduced the report of the Ad Hoc Committee (A/62/54). Prepared in the wake of serious allegations of sexual abuse and exploitation in peacekeeping operations, it contained in an annex an informal summary of the Committee's discussions. The issues addressed concerned the extent of the problem, the categories of United Nations personnel to be covered (scope *ratione personae*), the crimes to be covered (scope *ratione materiae*), the bases for assertion of jurisdiction over alleged offenders, and the question of investigations and cooperation among States and between States and the United Nations. The question of the elaboration of a further instrument had been deferred. A number of concerns had been raised by delegations during the discussions, to which the note by the Secretariat (A/62/329) provided a response. She welcomed the establishment of a working group to continue consideration of the report of the Group of Legal Experts (A/60/980), in accordance with the recommendation of the Ad Hoc Committee, and hoped that it would make headway in responding to a problem of acute importance to the United Nations.

2. **Mr. Michel** (Under-Secretary-General for Legal Affairs, the Legal Counsel) said that the importance attached by the Secretariat to the item under consideration was reflected in the presence at the current meeting, alongside himself, of senior representatives of the Office of Internal Oversight Services, the Department of Peacekeeping Operations and the Department of Field Support. Indeed, it was a matter that involved the core values of the Secretariat as the administrative and executive arm of the Organization.

3. The United Nations did not and could not condone criminal conduct by its officials and experts on mission. Such conduct, although it concerned only a minority, directly affected the operational activities and essential mission of the Organization. The gravity of the problem could not be measured by statistics alone, which in any case were lacking, but also by the suffering caused to victims and their families, the potential damage to the Organization's credibility and reputation and hence to its ability to discharge its mandate, and the threat that such conduct might bring to the physical security of United Nations personnel in general. Moreover, failure to prosecute offenders created an impression of impunity, which would aggravate the negative effects of such criminal acts. The international community must therefore make a resolute and serious effort to address the problem in a timely and efficient manner.

4. The note by the Secretariat (A/62/329) set out short-term and long-term measures to that end. It expressed support for the recommendation by the Group of Legal Experts that a new international convention should be elaborated in order to address the current jurisdictional gap. Such a gap was liable to occur when a host State could not properly exercise its jurisdiction over the alleged offender, while other States had not extended their jurisdiction to cover crimes committed in a host State. Since, barring an executive mandate, the United Nations could not fill that gap, Member States needed to be provided with appropriate bases for the establishment of their jurisdiction, through the adoption of an international convention. While making it clear which United Nations personnel would be subject to such jurisdiction, and for which crimes, such a convention would also provide mechanisms for enhanced international cooperation, particularly in regard to extradition, as well as cooperation between Member States and the United Nations, notably regarding the use by Member States in criminal proceedings of material provided by the United Nations; it could also be instrumental in ensuring the integrity of evidence.

5. Exercise of jurisdiction by a host State was by no means to be discouraged. However, in exceptional situations where a host State could not exercise its criminal jurisdiction efficiently by meeting the basic requirements of due process and preserving the rights of the victim and the alleged offender, other States would be empowered by such a convention to assert and exercise their jurisdiction. The essential criterion would be the fact of the alleged offender's operating in a conflict or post-conflict context in which the criminal judicial system had collapsed or might be impaired. While the convention would apply to all persons participating in United Nations operations, and not just peacekeeping operations, the military members of national contingents, who were subject to the exclusive

jurisdiction of the sending State, would be excluded from its scope. By the same token, military observers, who served the United Nations in a personal capacity and not as representatives of their State, would, as "experts on missions for the United Nations" within the meaning of article VI of the 1946 Convention on the Privileges and Immunities of the United Nations, come within the scope of the convention. The crimes to be covered should not be determined according to their nature, but rather by reference to a particular level of punishment that would thereby be incurred in a State that was able to assert jurisdiction.

6. Pending the adoption of an international convention on the subject, the General Assembly might wish to adopt a resolution urging States to exercise their criminal jurisdiction at least over their nationals alleged to have committed, in the course of a United Nations operation, an act considered to be a crime under their existing criminal laws and also under the laws of the host State. In addition, such a resolution could encourage cooperation between Member States and the United Nations in the sharing of information and the gathering of evidence. Other short-term measures could consist in preventive action in the form of predeployment training and increasing awareness of accountability for criminal conduct.

7. **Mr. Kemp** (Australia), speaking on behalf of the CANZ group (Australia, Canada and New Zealand) said that the Committee's work on the criminal accountability of United Nations officials and experts on mission was but one part of a broader United Nations response to the issue. The CANZ delegations welcomed the Organization's efforts in support of a policy of zero tolerance for sexual exploitation and abuse; they acknowledged the good work of the Secretary-General in establishing a bulletin on special measures for protection from such acts (ST/SGB/2003/13); and they welcomed the introduction since August 2005 of conduct and discipline teams in United Nations peacekeeping operations.

8. Where prevention failed, Member States and the United Nations had a shared responsibility to hold offenders accountable, and not only members of national contingents. Accordingly, the Committee needed to consider ways of ending impunity for criminal conduct by other United Nations personnel. The CANZ group supported the principle of an international convention that would require Member States to exercise jurisdiction over their nationals participating in United Nations operations abroad. Such a convention could also serve to facilitate international cooperation in the operation of criminal laws, in particular for extradition and mutual legal assistance in criminal matters, thereby enabling States to investigate more effectively crimes alleged to have been committed by their nationals in the context of a United Nations operation.

9. The CANZ delegations agreed that, while the measures to be adopted should apply to all personnel participating in United Nations operations overseas in whatever capacity, there was no need to include military members of national contingents and military experts on mission, as they were covered by their own national and military laws. They considered, however, that the establishment of quasi-universal jurisdiction, under which a State would be obliged to investigate and, where appropriate, prosecute alleged offenders if they failed to extradite them, was perhaps a broader approach than what was needed to address the current problem. In any case, the content of the new treaty would require considerable further negotiation. In the meantime, the CANZ group supported the short-term measures recommended by the Secretariat to fill the jurisdictional gap, in particular the adoption of a General Assembly resolution on the subject.

10. **Mr. Madureira** (Portugal), speaking on behalf of the European Union; the candidate country the former Yugoslav Republic of Macedonia; the stabilization and association process countries Albania, Montenegro and Serbia; and in addition, Armenia, Georgia, Moldova and Norway, said that any person participating in a United Nations operation who committed a serious crime should not go unpunished and must be held accountable for such conduct. The challenge was to find the best way of overcoming obstacles to their accountability, in accordance with the principles of rule of law, due process and human rights and in conformity with the United Nations Charter.

11. Member States should work with the Organization to ensure that the special status of United Nations officials and experts on mission did not exempt them from being held accountable for criminal acts, particularly in situations where the host State was unable to prosecute them. The Organization should give a clear political signal that it would not tolerate criminal misconduct and that it would actively work for the prevention and prosecution of any such act.

12. The European Union believed that one way of filling the jurisdictional gap referred to would be to encourage States to establish, assert and exercise criminal jurisdiction over their nationals participating in United Nations operations who committed serious crimes in a host State. It supported the elaboration of a General Assembly resolution to that end, which should provide a framework for identifying the measures to be taken. The resolution should also encourage Member States and the Organization to cooperate in sharing information, gathering evidence and ensuring the availability of witnesses; such cooperation could facilitate the exercise of jurisdiction by the State of nationality.

13. The European Union recognized, however, that short-term measures might well not suffice and it stood ready to continue further work on the issue, by examining in greater detail the merits and content of the proposed draft convention, including its interaction with other relevant instruments. It supported the convening of an ad hoc committee for further consideration of the matter. Such a convention would have the advantage of identifying clearly the circumstances in which Member States could exercise jurisdiction and the categories of personnel and types of crime to which such extraterritorial jurisdiction should apply. It would also facilitate international cooperation and cooperation between States parties and the Organization. The European Union believed that the Organization's response to the problem should be comprehensive and resolute and aim at enhancing the credibility and effectiveness of United Nations operations.

14. **Ms. Vargas Walter** (Cuba), speaking on behalf of the Non-Aligned Movement, said that the criminal accountability of United Nations officials and experts on mission was a subject of prime importance. She drew attention to the great sacrifices and tremendous contribution being made by peacekeepers around the world, 80 per cent of whom hailed from non-aligned countries. Since all United Nations staff must perform their duties in a manner which preserved the image, credibility, impartiality and integrity of the Organization, a policy of zero tolerance must be applied to all cases of misconduct, including sexual exploitation and abuse. The efforts being made by the Special Committee on Peacekeeping Operations to secure the adoption of a memorandum of understanding between the United Nations and troop-contributing countries were therefore commendable.

15. While she hoped that that the Sixth Committee would pursue its consideration of the report of the Group of Legal Experts on ensuring the accountability of United Nations staff and experts on mission with respect to criminal acts committed in peacekeeping operations (A/60/980), it would be premature to discuss the possibility of drafting a convention on the subject. Instead the Ad Hoc Committee on criminal accountability of United Nations officials and experts on mission should concentrate on substantive issues and leave questions of form until a later stage. Aspects requiring further clarification included the definition of the scope of application and the meaning of the term "United Nations officials and experts on mission", the determination of the types of crimes for which those persons could be held criminally accountable, and jurisdiction. A host State should not be precluded from exercising jurisdiction merely because the peacekeeping operation was taking place in a post-conflict area. Lastly, she hoped that the Ad Hoc Open-ended Working Group on Assistance and Support to Victims of Sexual Exploitation and Abuse would soon produce substantial results.

16. **Mr. Bichet** (Switzerland) said that while the various tasks performed by United Nations personnel on mission throughout the world were invaluable for the establishment of lasting international peace and security, over the previous 10 years that exemplary record had been tarnished by the misconduct of a handful of individuals. Unfortunately, it had proved difficult to call them to account for the offences they had committed while on mission. For that reason, it was not only essential to prevent the commission of such crimes, but also crucial to end the impunity of the perpetrators. In fact, their prosecution was a duty to the population of the host State and a means of avoiding the permanent sullying of the Organization's reputation.

17. The drafting of a new international convention to fill in gaps in States' jurisdiction and settle some other related matters would supply a firm legal basis making it possible to waive the immunity currently enjoyed by the United Nations if the need arose, although that immunity regime would not be endangered by such a convention. It would be best to adopt an action-oriented approach based on the proposal of the Group of Legal Experts.

18. In the absence of a special regime, the host State was primarily responsible for bringing proceedings in respect of an offence committed in its territory, but when it was unable to do so, that responsibility then fell to the sending State, in accordance with the active personality principle already embodied in a number of treaties, which should likewise apply to the criminal accountability of United Nations officials and experts on mission. All States were under a moral obligation to both the victims and the nationals of the host State to take the necessary steps to ensure that they could prosecute their own nationals for any offence they had committed while on mission, even if that meant amending their national legislation. The difficulties faced by some sending States in that respect ought to be discussed.

19. As the mandate of the Group of Legal Experts had been to study the criminal accountability of United Nations officials and experts on mission, the tendency to completely exclude military personnel in national contingents from the ambit of any future convention on the subject was worrying. It would be wise for such a convention to contain legal rules applicable to all persons involved in peacekeeping operations, whatever the nature of their activities, although those rules should not necessarily be identical for all categories of personnel. If military contingents were to be excluded from the scope of application of a convention, any attempt to protect victims' rights and the interests of States and the United Nations would be futile, because experience had shown that when criminal offences were committed during peacekeeping operations, soldiers were the most likely culprits. For that reason, a convention should be drafted which provided that States had criminal jurisdiction over crimes committed by their military contingents assigned to peacekeeping operations. That would be a supplementary obligation which was, however, necessary for the effective implementation of existing and future agreements on the status of missions and forces. That status would clearly not be affected by such a convention.

20. Since close collaboration and smooth communication between States themselves and between States and the United Nations were crucial, it would be advisable to provide a legal basis guaranteeing that States informed the United Nations of all cases falling within their criminal jurisdiction and the competence of their courts. As the drafting of a new convention would require some time, the most sensible interim solution would be to endorse the Secretariat's proposal contained in its note (A/62/329), namely that the General Assembly should adopt a resolution urging Member States to extend their jurisdiction to cover their nationals who committed serious crimes as defined in their existing domestic criminal laws.

21. Lastly, he expressed support for the recommendation that a working group should be established with a view to continuing the consideration of the report of the Group of Legal Experts, focusing on its legal aspects and, taking into account the views expressed in the Ad Hoc Committee

22. **Ms. Negm** (Egypt) said that her country attached great importance to the subject of criminal accountability; many of its nationals were involved in United Nations peacekeeping activities and it firmly believed in the significant role the United Nations played in the maintenance of international peace and security. It consequently supported the Organization's efforts to preserve its public image and had faith in the zero tolerance policy maintained in addressing all cases of sexual exploitation and abuse committed by peacekeeping personnel. To that end, it was vital to identify any existing gaps and explore better ways of dealing with and avoiding wrongdoing. The allegations in such cases should, however, be carefully examined, as they were frequently unsubstantiated by reliable evidence, thus giving rise to the possibility of false accusations and unlawful claims for compensation. It was also important to consider the jurisdiction exercised by States which contributed experts and officials to peacekeeping operations, with the aim of establishing criteria for trials involving extraterritorial crimes, particularly in situations where the host State was unable to exercise jurisdiction over crimes committed within its territory, in accordance with the status-of-forces agreement signed with the United Nations. If the criterion of nationality or permanent residence was regarded as the determining factor, responsibility for prosecution and trial lay with the sending State. Other criteria, including territorial jurisdiction and the guarantee of justice, should likewise be taken into account.

23. All elements relating to the criminal accountability of United Nations experts and officials on mission, in particular the definition of such experts, conditions for immunity and the level of cooperation between States and the United Nations, should be

comprehensively examined before any idea of a new legal instrument was entertained. In that context, she stressed that military experts should be treated in the same way as military personnel of national contingents assigned to peacekeeping operations insofar as both were subject to the military law of their State of nationality. Egypt had extended its military and criminal laws to include the prosecution of Egyptians who committed crimes abroad, the aim being to close all legal loopholes concerning the participation of any of its nationals as United Nations experts or officials on mission.

24. Close cooperation with the Special Committee on Peacekeeping Operations was essential in order to avoid duplication of work. In addition to pinpointing all gaps and obstacles in the existing system, it was also important to identify possible measures for strengthening the rules of criminal prosecution in troop-contributing countries in order to ensure the just punishment of those of their nationals who committed crimes abroad.

25. **Ms. Rodríguez-Pineda** (Guatemala) said that that the scope *ratione personae* of any rules on the criminal accountability of United Nations officials and experts on mission should apply to all persons assigned to peacekeeping operations, irrespective of the department, organ or programme from which they are assigned and, possibly, at a subsequent stage, to all United Nations personnel at Headquarters and in the field.

26. His delegation had already expressed concern about how to deal with cases involving experts on military missions. One option might be to amend the guidelines on disciplinary measures against such officials so that they covered that category of personnel, along the lines of the changes which the Special Committee on Peacekeeping Operations had recently introduced to the memorandum of understanding between the United Nations and troop-contributing countries.

27. As for jurisdiction *ratione materiae*, the crimes under discussion were, by their very nature, qualified as offences in the penal code of every State. Paragraph 6 of the model status-of-forces agreement for peacekeeping operations stipulated that all members of peacekeeping operations must respect all local laws and regulations. Hence all acts usually regarded as crimes under national criminal law should be deemed breaches of the standards of conduct applicable to United Nations personnel and officials. Another deciding factor should be the impact of the misconduct. In that respect, a distinction should be drawn between crimes producing an effect outside the mission on the local population of the host State and which therefore affected the Organization's image, as opposed to those committed against or within the Organization. The Committee's deliberations must not be confined to crimes related to sexual abuse and exploitation, but must encompass crimes against the person, against the cultural heritage, against the public authorities, against safe passage, and misappropriation of funds.

28. The bases for jurisdiction raised issues of immunity as well as those of jurisdiction. The principle of unrenounceable territorial jurisdiction meant that, even in the event of competing jurisdictions, the host State must have priority in keeping with its sovereignty and the rule of law. Jurisdiction based on nationality was restricted by the double criminality requirement and the fact that national criminal law did not apply extraterritorially. Nor did it appear possible to rely on universal jurisdiction for ordinary crimes. The related subject of immunity, which was extremely complicated and technical, would, however, have to be addressed, because the Charter provided solely for functional immunity and no kind of crime formed part of the functions of any official or expert on mission. A lack of uniformity thus existed with regard to the waiving of immunity and to the determination of its source. She therefore suggested that either the Sixth Committee or the International Law Commission should study ways of harmonizing practice in respect of immunity in order to preclude impunity.

29. The model status-of-forces agreement might also be in need of revision with a view to facilitating jurisdiction and enhancing cooperation through the appending of annexes providing for cooperation with the host State in judicial and police inquiries. In fact, the efficacy of the measures adopted by the Committee would hinge on cooperation between States and the United Nations, between various departments of the Organization, and, above all, between States. Cooperation in investigations was particularly important, since many countries, including her own, regulated extradition solely through treaties. For that reason, thought should be given in the future to the drafting of a model instrument resting on the principle

of *aut dedere aut judicare* which States could adopt bilaterally.

30. It was too early to decide what form should be taken by the instrument on the criminal accountability of United Nations officials and experts on missions; there were many possibilities besides a multilateral convention which would, in any case, be binding only on the parties to it.

31. **Mr. Ma** Xinmin (China) said that ever since 1948, when the first peacekeeping mission had been established, United Nations peacekeeping operations had played a central role in maintaining world peace and stability, thereby contributing to post-conflict rehabilitation and development. Tens of thousands of peacekeepers from over 100 countries had carried out their duties in foreign lands under dangerous and harsh conditions. But although their dedicated service had earned them broad support and deep appreciation from the international community, recent criminal acts by a few United Nations officials on mission were damaging the credibility of peacekeeping operations and undermining their effectiveness. Calling the perpetrators to account would restore that credibility and effectiveness and help to win the hearts of the population in mission areas.

32. Before proceeding any further with the topic, it would, however, be necessary to ascertain the prevalence and severity of the crimes committed by peacekeepers, the methods used to deal with those offences in the past, the effectiveness of those measures and the proportion of cases deemed serious enough to lead to prosecution and indictment.

33. Turning to the thornier question of the terms for exercising jurisdiction and the scope of jurisdiction, he said that the punishment of criminal activities should not hamper United Nations officials and experts in the fulfilment of their peacekeeping mandate. It was therefore imperative to abide by the principle of criminal jurisdiction set forth in the Convention on the Privileges and Immunities of the United Nations. The only acts which should be punished should be those falling outside the scope of the immunities accorded to United Nations officials and experts for the purpose of conducting their official duties. It was also important to take account of the relevant laws of the host State and the State of nationality of the official or expert, as well as the pertinent provisions of international humanitarian law.

34. The primary goal of establishing jurisdiction was to ensure that crimes would be punished, justice upheld and victims compensated. The host State should be given priority in exercising jurisdiction over criminal acts by United Nations personnel, but when it was unable to exercise such jurisdiction, or when it was more convenient for the State of nationality of the alleged offender to do so, priority should be given to that State. Nevertheless, the State of nationality should retain exclusive jurisdiction over police officers, military observers, liaison officers and advisors seconded to United Nations peacekeeping missions.

35. It was vital to improve international cooperation, to bolster judicial cooperation among host States, States of nationality and the United Nations, to establish the requisite judicial assistance mechanisms and to work together to punish crimes committed by United Nations personnel. It should be made plain that military personnel from national contingents would not be subject to the type of punishment under discussion. Despite the existence of a consensus on the need to end impunity, it was unclear whether the goal of securing criminal accountability would be best served by drafting an international convention, adopting a General Assembly resolution or calling on the States concerned to strengthen their domestic legislation. It was, however, evident that the United Nations itself should improve its internal oversight, prevention and disciplinary mechanisms if an optimal solution was to be reached.

36. **Mr. Maharia** (India) said it was a matter of great concern that, despite the existence of clear codes of conduct for United Nations peacekeepers and a policy of zero tolerance, cases of sexual abuse and exploitation and other criminal acts were still being reported. They tainted the image not only of the United Nations, but also of the sending States. Since United Nations peacekeepers were sent on humanitarian missions in areas riven with conflict in order to restore the rule of law, curb violence and promote good governance, it was regrettable if they did not themselves observe the law. United Nations personnel who violated the Organization's codes of conduct must be called to account. For that reason, it was essential to ensure that United Nations personnel were neither exempt from the consequences of crimes committed at their duty station, nor unjustly penalized.

37. In order to bridge jurisdictional gaps, his Government was in favour of a General Assembly

resolution along the lines of that proposed in the Secretariat's note (A/62/329), which would fulfil the requirement of double criminality. It was also prepared to consider other short-term measures, such as the inclusion in Security Council resolutions on peacekeeping missions and in the memorandum of understanding with troop-contributing countries of language to the effect that Member States must ensure accountability. A convention was not the only remedy for gaps in the current system, which could be plugged by the short-term measures suggested in the Secretariat note, or through the development of a model law as advocated by the Group of Legal Experts. Many States, including India, already exercised jurisdiction over their nationals for crimes they had committed outside their territory and they did not therefore need a convention for that purpose. If a small number of States did not assert extraterritorial jurisdiction over ordinary crimes, more focused efforts should be directed at those countries.

38. As for scope *ratione personae*, it might be hard under national laws to treat military observers in a manner different from members of national contingents. Another difficulty inherent in the proposal of the Group of Legal Experts stemmed from the fact that it recommended that the host State should itself establish criminal jurisdiction. While that suggestion was consistent with the principle of territoriality, in some situations legal and law-enforcement machinery might be weak or non-existent and the remedies advocated by the Secretariat for such deficiencies might not result in the production of reliable, credible or legally admissible evidence.

39. Since the process of adopting a binding international treaty or convention could well be lengthy, it would be wise at the current juncture first to implement short-term measures and assess their efficacy and only then to decide whether long-term measures were needed.

40. **Mr. Tugio** (Indonesia) said that the brave men and women of United Nations peacekeeping operations served in dangerous locations and they epitomized the finest United Nations traditions. But while the majority of United Nations officials and experts, including peacekeepers, behaved in an exemplary fashion, the criminal acts perpetrated by a few of them while on mission jeopardized not only the Organization's image and reputation, but also local communities' trust in it. For that reason, criminal misconduct by United Nations personnel could not be tolerated, but must be dealt with in criminal proceedings guaranteeing due process, a fair trial and the rule of law. One of the surest ways of consolidating the zero-tolerance policy against sexual exploitation and abuse and other serious crimes was through proper training and awareness raising at the predeployment stage and at frequent intervals during operations.

41. Further clarification of the proposed measures' scope *ratione personae* and *ratione materiae* was required. As far as the exercise of jurisdiction was concerned, it was necessary to avoid duplicating existing mechanisms governed by the relevant conventions on the privileges and immunities of United Nations officials and experts and to make sure that there was no inadvertent conflict with the status-of-forces agreement for peacekeeping operations concluded between troop-contributing countries and the United Nations prior to assignment or deployment. Military observers, who were regarded as experts on mission, should be excluded from the scope of application of the proposed regulations and any criminal acts they committed should be taken up with the troop-contributing country concerned. It was important to strengthen cooperation between host States, States of nationality and the United Nations to ensure that justice was done.

42. **Mr. Mansour** (Tunisia) said that his country, while recognizing the contribution and sacrifices made by United Nations peacekeepers, attached great importance to preserving the image, credibility and integrity of the Organization and fully supported the policy of zero tolerance for acts of sexual exploitation and abuse committed by peacekeeping personnel. Certainly, the perpetrators of such acts must not go unpunished, but further study was needed in order to ascertain the extent of the problem and decide on the best way of approaching it. In particular, the idea of drafting a convention on the subject should be examined in greater depth in order to determine whether it was the most appropriate means of filling the existing judicial gap. Other approaches, such as adopting model legislation or adopting a General Assembly resolution calling on States to enact legislation allowing the exercise of extraterritorial jurisdiction, might also be envisaged.

43. Whatever approach was chosen, his delegation took the view that military observers and civilian police should be excluded from the scope of any future

legal instrument; rather, like members of national military contingents, they should remain under the military jurisdiction of the sending State. At the same time, Tunisia favoured a broader scope of application for the proposed instrument, encompassing personnel from the various United Nations programmes and specialized agencies and other activities in the field. It also supported expanding the scope *ratione materiae* to include crimes other than sexual exploitation, including theft, fraud, money-laundering and torture.

44. **Mr. Mukongo Ngay** (Democratic Republic of the Congo) observed that demand for the intervention of the United Nations in peacemaking and peacekeeping operations had grown steadily in recent years. Peacekeeping troops often served under dangerous and unstable conditions, and his delegation wished to express its gratitude to the States that had provided such troops over the years. Unfortunately, their exemplary work had been tainted by the scandalous conduct of some individuals. The 2004 revelations of sexual abuse and exploitation by a substantial number of peacekeepers in his country, for example, had greatly sullied the image of United Nations peacekeeping. His delegation believed that no one was above the law and that United Nations officials and experts on mission who had committed crimes while involved in peacekeeping operations should be held to account for their conduct.

45. However, his country's experience had shown that the domestic courts had difficulty in exercising criminal jurisdiction over United Nations personnel accused of engaging in acts of sexual exploitation and abuse or other crimes, such as illicit trafficking of precious materials. The problems stemmed from weaknesses in the justice system, exacerbated by years of war, and from the according of special immunities and privileges to United Nations officials and experts on mission. It appeared that it was often difficult for the Secretary-General to waive the immunity of personnel accused of committing serious offences in cases in which the judicial institutions in the host country were not deemed to meet minimum international human rights standards. Rehabilitation of the justice system in post-conflict societies should therefore be a priority.

46. His delegation, while affirming the primacy of the legitimate and sovereign right of the host country to exercise jurisdiction in respect of crimes committed in its territory, was open to the idea of the exercise of jurisdiction by the sending State in order to avoid impunity — in collaboration with the host State, of course, particularly with regard to investigations and extradition. It had to be recognized, however, that such collaboration would often be limited by the reluctance of sending States to admit publicly to misconduct by their troops or to institute court-martial proceedings against them.

47. The aforementioned difficulties confirmed the existence of a jurisdictional gap which could not be filled by status-of-force agreements alone. His delegation therefore supported the negotiation of an international convention which would enable Member States to assert their jurisdiction over crimes committed in a host State when that State was unable to take the necessary action. The Sixth Committee should collaborate with the Fourth Committee and with the Special Committee on Peacekeeping Operations in the work to be undertaken on such a convention.

48. The evidence collected through administrative investigations conducted by the Office of Internal Oversight Services could serve as information, although it could not form the basis for action by the prosecuting body. The scope *ratione materiae* of a future convention should not be limited to sexual exploitation and related offences, but should extend to crimes of an economic nature, such as illicit trafficking in drugs and precious materials. The notion of "serious crimes" must be clearly defined. Given the disparities in national legislation, his delegation did not believe that the severity of the penalty prescribed would be an objective criterion for determining whether or not an offence constituted a serious crime.

49. Regarding the scope *ratione personae*, he sought clarification of the basis for the distinction between the legal regime covering military personnel employed by the United Nations as experts on mission and the regime covering United Nations officials and experts on mission, as that distinction was crucial for delimiting the scope of the convention. Lastly, his delegation endorsed the recommendation by the Group of Legal Experts concerning predeployment awareness training and induction training for peacekeeping personnel, and encouraged the Special Committee on Peacekeeping Operations to continue developing a victims assistance policy.

50. **Ms. Chavanart** (Thailand) said that Thailand fully supported the policy of zero tolerance for all

misconduct by United Nations personnel. The increasing number of cases of impunity was partly due to a lack of sufficient political will to prosecute those responsible for crimes committed in the course of peacekeeping operations. Given the complex nature of the issue and the need for further clarification of a number of matters, her delegation shared the view that the Committee should focus on substantive matters at the current stage rather than on the form of the instrument required to translate Member States' opinions into action.

51. Her delegation was convinced that a first step in dealing more effectively with misconduct by United Nations peacekeepers was to reconsider the issue of immunity, using Article 105 of the Charter of the United Nations as a basis. The question was whether such immunity should be waived when there was a serious breach of the law. The United Nations should perhaps begin by considering the possibility of revising the immunity provision under its model status-of-forces agreement. Narrowing the immunity of United Nations peacekeeping personnel to exclude acts — whether or not committed during the course of official duty — that seriously violated human rights and criminal law, except in circumstances of self-defence, would help not only to increase the level of accountability of United Nations personnel and its experts on mission but also to uphold the rule of law and the provisions of the Geneva Conventions.

52. Thailand also considered it necessary to undertake further study of the criminal accountability of United Nations personnel who committed crimes not in the State in which they were serving as members of a peacekeeping mission, but in a place of recreational visit or temporary stay. For instance, in 1992 a member of the United Nations Transitional Authority in Cambodia had entered Thailand temporarily and through reckless driving had caused the death of a Thai national.

53. Concerning the form of a future legal instrument, the suggestion by the Group of Legal Experts to develop a convention in order to bridge the jurisdictional gap merited careful consideration. If it was decided to proceed with a convention, consideration should be given to the possibility of including a provision to hold superiors jointly responsible for crimes committed by subordinates in the event that they knew or consciously disregarded information about such crimes.

54. As for the question of extradition, the requesting State should incorporate a provision in its domestic law to suspend the statute of limitations for the crime committed or to extend its prescription once the extradition procedure had commenced. In addition, countries should adopt a more flexible approach in dealing with the double criminality requirement, applying conduct-based criteria rather than correspondence of offences as the condition for determining whether or not an offence was extraditable.

55. **Mr. Riofrío** (Ecuador) reaffirmed his country's commitment to the zero tolerance policy and its conviction that perpetrators of criminal acts should be duly investigated, prosecuted and punished. However, in seeking mechanisms to avoid impunity, it was essential to uphold the principles of due process and respect for human rights. The proposal to draft a convention on criminal accountability of United Nations officials and experts on peacekeeping missions needed further analysis and should be viewed as one of several possible actions and measures, since the variety of circumstances surrounding peacekeeping missions made a "one-size-fits-all" approach impossible. Before any decision was taken to commence negotiating a treaty, serious thought should be given to the categories of personnel who would be subject to such an instrument, as it was not clear whether the wording "United Nations officials and experts on mission" proposed by the Secretariat was sufficiently broad.

56. The treatment of military observers was a matter of especial concern for his delegation. It must not be forgotten that such personnel remained members of their national armed forces on active duty and were thus subject to the military jurisdiction of the contributing State, which retained responsibility for their conduct and discipline. Although military observers rendered their services to the United Nations on an individual basis and not as members of a contingent, their participation in peacekeeping missions was considered part of their country's contribution, like the participation of police officers and administrative officials. Moreover, military observers did not receive the same treatment as civilians with regard to repatriation. On more than one occasion, a contributing country had been asked to repatriate such observers, which had been done almost immediately, whereas civilian personnel could not simply be dismissed and were entitled to periods of

notice and procedures laid down by the United Nations.

57. Consequently, his delegation was of the view that, although military observers and police had been classified as "experts on mission" under the model status-of-forces agreement, for legal purposes they should be given a status distinct from that of civilian personnel. His delegation believed that a model similar to the Model Memorandum of Understanding between the United Nations and Member States contributing resources to United Nations peacekeeping operations should be developed for military observers and police officers in order to establish the terms of their relationship with the United Nations and their legal status vis-à-vis the contributing and host countries.

58. Issues such as jurisdiction, investigation and a commitment to provide predeployment training for such personnel could be addressed under such a model as a medium-term measure, leaving the door open for future negotiations on an international instrument for all categories of personnel. The development of such a model should go hand in hand with the revision of the model status-of-forces agreement, which was in need of updating in order better to reflect the multidimensional nature of present-day peacekeeping operations.

59. There should be cooperation and coordination on the matter between the Ad Hoc Committee and the Special Committee on Peacekeeping Operations as well as between the Fourth and Sixth Committees.

60. **Mr. Álvarez** (Uruguay) said that Uruguay had considerable experience with the deployment of its national troops on peacekeeping missions and was thus in a position to contribute actively to the Working Group meetings. Uruguay reaffirmed its full support for the zero tolerance policy, not only with respect to sexual exploitation and abuse but also in cases of crimes committed by United Nations officials not assigned to peacekeeping operations.

61. Concerning the scope *ratione personae* of the proposed draft convention, his delegation believed that special consideration should be given to the situation of military observers and civilian police, who continued to be officials on active duty of the sending State and therefore should be considered as subject to its jurisdiction. Language should be added to the memorandums of understanding between the United Nations and troop-contributing countries with regard to the disciplinary policies to be applied in cases of sexual exploitation and abuse; such language might also be included in the contracts or guidelines signed by observers for each peacekeeping mission. Measures for the protection of victims should also be an integral part of the contract signed by the observer and by the sending State.

62. With regard to the scope *ratione materiae*, Uruguay would reserve comment until there was greater clarity about the nature of the legal instrument to be developed. However, his delegation felt that it would be difficult to establish a catalogue of offences to which all States parties would agree. Concerning jurisdiction, it should be exercised by the State of which the alleged offender was a national. Such an approach would ensure that criminal proceedings were instituted and that due process was followed, and, if an effective system of judicial cooperation were implemented, it would also ensure close collaboration between the concerned States in the pre-trial investigation phase. It should be borne in mind, however, that the proposed instrument might also apply to United Nations officials without functional ties to their State of nationality and who resided in third States. It would therefore be necessary to examine the extradition regimes that might be applicable to such individuals.

63. Cooperation during the investigatory stage between Secretariat authorities in the field and national authorities should be improved. Uruguay had repeatedly proposed that a national legal adviser should be appointed from the inception of an investigation in cases involving military contingents in order to ensure that the findings were consistent with the internal rules of the sending State for pre-trial proceedings in criminal cases and administrative hearings.

64. **Ms. Valenzuela** (El Salvador) said that her Government recognized the important contribution and the sacrifices made by United Nations peacekeeping personnel, but stressed that their work must be performed in a manner compatible with the Charter of the United Nations. When crimes were committed by individuals who were part of a United Nations operation, they damaged the trust that the United Nations was hoping to inspire in the local community, which hindered the Organization's ability to fulfil its mandate.

65. El Salvador supported the implementation of the short-term measures mentioned in the note by the Secretariat (A/62/329), which would strengthen the role of Member States in the exercise of criminal jurisdiction, while longer-term measures were being studied. With regard to a future convention, El Salvador had some reservations, in particular concerning the scope *ratione personae* and the scope *ratione materiae*.

66. **Ms. Naidu** (South Africa) said her delegation shared the view that there should be no impunity for United Nations officials or experts who committed crimes while on mission. If a legal vacuum existed in that regard, it must be addressed. However, it was important first to consider the existing barriers to ensuring accountability in order better to assess whether an international convention would be the most appropriate means for addressing the problem, especially since the proposal entailed a significant effort to address what might be a small subset of the larger issue concerning sexual exploitation and abuse. It might not be worthwhile to expend the resources required to develop a convention. Alternatives might also be considered, such as a General Assembly resolution calling on States to take stronger domestic action, model legislation, intensified efforts by the Secretariat to identify those States failing to take appropriate action, and awareness-raising through, for example, predeployment training. A convention should be considered only if it was determined that the jurisdictional gap was truly significant and that there were no other means of remedy. Such a determination could best be made through a debate involving both host countries and sending countries, together with input from the Secretariat.

67. **Mr. Alday González** (Mexico) said there was general agreement that it was vital to ensure that United Nations peacekeeping personnel performed their duties in a manner consistent with the purposes and principles of the Charter of the United Nations in order to preserve the Organization's credibility and impartiality. Although a number of different views had been expressed as to the best means of ensuring that those who committed crimes did not escape with impunity, a clear consensus had emerged in favour of a zero tolerance policy. In order to ensure criminal accountability, it was necessary to restructure the Organization's peacekeeping operations and to establish a clear and strict legal framework governing the acts of personnel participating in such operations.

68. The seriousness of the issue of criminal accountability of United Nations officials and experts on mission warranted the negotiation of an international convention on the subject. The draft convention elaborated by the Group of Legal Experts constituted a sound basis for negotiation.

69. With regard to the scope of application *ratione personae*, his delegation welcomed the Secretariat's suggestion that a future convention should apply to military observers, as experts on mission, and to all persons participating in United Nations operations, irrespective of the department, office, programme or fund with which they were engaged. Moreover, so as to prevent impunity and maintain the confidence of local populations in the United Nations, due consideration should be given to the Secretariat's suggestion to include in the scope of a future convention persons participating in peacebuilding and humanitarian operations, without distinction between operations conducted under Chapter VI of the Charter and those conducted under Chapter VII.

70. Turning to the scope of application *ratione materiae*, he said that a future convention should provide for extraditable offences, but should not contain a list of specific crimes to be covered.

71. Concerted efforts were required in order to address the existing legal gaps. Pending the elaboration of an international convention, which would be a long-term endeavour, the short-term measures mentioned by the Secretariat in document A/62/329 should be implemented.

72. **Ms. Mohd. Nurdin** (Malaysia) said that her delegation was concerned to ensure that the good name and image of United Nations peacekeeping missions were not tarnished through the exploitative acts of a few individuals. As a troop-contributing country from which national contingents of military, police and civilian personnel were currently deployed under the United Nations Mission in Timor-Leste and the United Nations Interim Force in Lebanon, Malaysia had a direct interest in any new measures adopted by the United Nations with regard to the criminal accountability of officials and experts on mission.

73. Malaysia had participated actively in the first session of the Ad Hoc Committee and intended to

continue contributing constructively to discussions on the matter. Basic issues arising from the report of the Group of Legal Experts (A/60/980) were still being discussed, with a focus on elucidating problem areas and considering viable solutions, while the final form of any future instrument on the subject was being treated as a secondary consideration. Her delegation endorsed that approach.

74. The areas considered by the Ad Hoc Committee at its first session touched on fundamental issues relating to the draft convention proposed by the Group of Legal Experts: the scope of application *ratione personae* and *ratione materiae*, the basis and primacy of jurisdiction over the criminal acts identified, and the investigation, custody and prosecution of alleged offenders, with due regard for the need for cooperation among States and between States and the United Nations. Those issues should also be considered in a wider context in the event that a convention was deemed unnecessary.

75. Malaysia's Armed Forces Act 1972 and Police Act 1967 covered Malaysian personnel serving as experts on missions abroad, wherever they were deployed. Malaysia was therefore able to exercise jurisdiction over them. Further, it was Malaysia's view that provision could be made in the deployment authorization document, whether a United Nations status-of-forces agreement or other document, to ensure that those personnel were adequately accountable.

76. Further discussion was required with regard to the scope of the offences for which United Nations staff and experts on mission were to be held accountable. Moreover, the types of acts identified must be duly criminalized in both the host and sending States so as to ensure the possibility of prosecution and of the imposition of comparable penalties on conviction.

77. The procedural and evidential issues considered by the Ad Hoc Committee would also require further deliberation, taking into account the existing legal and procedural requirements of Member States. Therefore, questions of form should be taken up at a later stage if necessary.

78. **Mr. Medrek** (Morocco) said that his country had been a pioneer in contributing to the Organization's efforts to prevent conflict and restore peace and security around the world. It therefore attached great importance to the question of the accountability of United Nations officials and experts on mission. The legitimacy of the United Nations depended largely on the trust it enjoyed. In order to preserve the Organization's credibility and integrity, Member States must combine their efforts to find the most effective way of ensuring accountability for crimes committed by United Nations staff while respecting the principles of due process, human rights and the rule of law.

79. His delegation supported the short-term measures suggested by the Secretariat aimed at addressing the current jurisdictional gap, in particular the adoption of a resolution by the General Assembly urging Member States to establish jurisdiction over their nationals who committed serious crimes as defined in their domestic criminal laws. As for the suggestion to negotiate an international convention on the subject, his delegation felt that, while such a convention could be useful, the discussion was premature, particularly since negotiations would require a considerable commitment of time and resources. For the moment, the debate should focus on questions of substance rather than form.

80. His delegation, like many others, believed that a number of points required clarification: the scope of application *ratione personae* and *ratione materiae*, jurisdictional questions, terminology, questions of immunities and their lifting and the mechanism to ensure the prosecution of alleged offenders.

81. His delegation wondered whether it was appropriate to limit the scope of application *ratione personae* to United Nations personnel and experts participating in a United Nations peacekeeping operation, since the Group of Legal Experts had itself noted the possibility of a broader scope of application to cover officials and experts on mission, where they were present in an official capacity in the area of a United Nations peacekeeping operation. In that connection, military personnel, regardless of whether they were employed by the United Nations as experts on mission, should remain, in principle, solely under the national jurisdiction of the contributing State.

82. With regard to the scope of application *ratione materiae*, his delegation favoured the inclusion not only of crimes involving sexual exploitation but also of crimes such as theft, fraud, money-laundering and torture. Concerning jurisdiction, his delegation reiterated its position in favour of the primacy of the

jurisdiction of the host State. Lastly, with regard to procedure, a number of issues covered by the report of the Group of Legal Experts touched upon the work of other United Nations bodies. In order to avoid duplication, there should be close cooperation and coordination between the Fourth and Sixth Committees, as well as with the Special Committee on Peacekeeping Operations.

83. Crimes committed by persons participating in United Nations operations harmed not only their victims and the host country but also the entire international community. It was to be hoped that the future work of the Ad Hoc Committee would lead to the establishment of an appropriate legal framework for the prosecution of such individuals.

84. **Mr. Donovan** (United States of America) said that the United States regarded abuses by personnel participating in United Nations peacekeeping missions, who were meant to help those in distress in areas in conflict, as a violation of trust. His delegation therefore welcomed the efforts made in recent years to address the problem.

85. His delegation had already expressed its preliminary views on the report of the Group of Legal Experts (A/60/980) at the Ad Hoc Committee's session in April 2007. However, the report left a number of important questions unanswered, particularly in respect of its proposal regarding the possible negotiation of a multilateral convention.

86. The report was based on the assumption that there were theoretical gaps in accountability mechanisms that could preclude accountability for crimes committed by United Nations staff and experts on mission in particular cases. However, more information was needed on what practical problems, if any, were actually arising in efforts to investigate and prosecute crimes committed by those categories of personnel and whether a convention would actually address such problems. During the Ad Hoc Committee's session, his delegation and a number of others had requested additional information on those questions so as to help assess the utility of a convention.

87. Such information was needed because the negotiation of a convention would require significant resources, time and political capital. The United States could not support commencing such an effort without being sure that such a convention was likely to be an effective solution to whatever problems currently existed. A convention might be of some use if the problem to be solved was the lack of a legal basis for States to cooperate with each other in investigating or prosecuting such crimes or for States to prosecute their own nationals for crimes committed abroad. However, the proposed convention would not address other possible barriers to accountability, such as national definitions of crimes such as rape, where it was difficult to prove guilt or to prosecute sexual conduct involving adolescents. Moreover, a convention would be binding only on those States that became parties to it and would therefore have practical value only to the extent that States that were likely to host peacekeeping operations and the States of nationality of relevant staff and experts chose to become parties. His delegation would prefer to address those questions in practical terms, by identifying effective solutions to actual problems, rather than by addressing theoretical gaps for their own sake.

88. Regrettably, the additional information received from the Secretariat after the Ad Hoc Committee's session had not addressed the question of what practical impediments, if any, were actually being encountered in efforts to ensure accountability for crimes committed by United Nations staff and experts on mission. Instead, the Secretariat's note (A/62/329) had taken the unusual form of a paper expressing the "support" of the Secretariat for particular proposals that were the subject of active discussions among Sixth Committee members. In the absence of the necessary information, his delegation did not expect to be in a position during the current discussions to support the negotiation of a convention. Efforts should instead be focused on considering more practical measures to promote accountability for crimes committed by United Nations staff and experts on mission. Such measures might include work on a statement calling on States to take stronger action domestically; work on "model laws" that States could adopt at the national level to address such cases; increased effort by the Secretariat to monitor efforts by States to investigate and prosecute cases; and the naming and shaming of States that failed to take appropriate action.

89. **Ms. Rodríguez de Ortiz** (Bolivarian Republic of Venezuela) said that her country, which had the utmost respect for human rights, attached great importance to the issue of ensuring the criminal accountability of United Nations officials and experts on mission. She welcomed the universal support among delegations for

a zero tolerance policy designed to offer the highest possible level of protection to persons under the direct protection of the United Nations, in particular those who were vulnerable to sexual exploitation and abuse. In addition, the host State should have primacy of jurisdiction, in accordance with the principle of territoriality.

90. In the short term, the Organization's capacity should be strengthened so as to enable it to conduct criminal as well as administrative investigations. Thus, any evidence collected would meet the admissibility requirements of a criminal case conducted in accordance with due process.

91. In the medium and long term, discussions on the relevance of a convention should continue. Irrespective of the decision eventually taken in that regard, work should continue on a number of important matters of substance, including the applicable jurisdiction and the possibility of legal gaps in cases where the individual suspected of committing a crime had departed the mission area; the United Nations officials and experts to be covered; and specification of the crimes to be covered, bearing in mind that the scope of application of a future convention should not be limited to crimes against persons but should extend to all crimes of a serious nature.

92. Efforts to prevent impunity would have the effect of strengthening the Organization's work in respect of the maintenance of international peace and security, thus helping to preserve its image, credibility and impartiality.

93. **Mr. Lamine** (Algeria) said that the privileges and immunities enjoyed by United Nations personnel under the 1946 Convention on the Privileges and Immunities of the United Nations were granted exclusively in the interests of the Organization and not for the personal benefit of staff. The Secretary-General could and indeed should waive immunity where it would prevent justice from being done. It was therefore important for all staff, in the performance of their duties, to preserve the Organization's image, credibility, impartiality and integrity.

94. The aim of the Committee's work in that regard was to put in place an appropriate legal framework to allow for the prosecution of the small number of United Nations officials and experts who committed offences while on mission. His delegation agreed in principle with the proposal of the Group of Legal Experts that an international convention should be drafted for that purpose. However, before such work began, there should be further in-depth discussion of a number of issues such as the scope of application *ratione personae* and *ratione materiae*, jurisdiction, terminology, immunities, the mechanism to ensure the prosecution of alleged offenders and the necessity of ensuring international cooperation, including extradition.

95. Military officers deployed by the United Nations as experts on mission should be excluded from the scope of application of any future instrument. All national law systems applied jurisdiction based on the active personality principle without reservations to that category of persons. Exceptions to that rule would result in the United Nations being deprived of the valuable expertise of military officers.

96. **Mr. Arévalo** (Chile) said that it was vital to uphold consistently the principle that no one was above the law. Crimes that might be committed by United Nations officials and experts on mission were serious in themselves, but the status of the perpetrators was an aggravating circumstance. Persons called upon to protect populations in traumatic situations must honour their responsibilities.

97. A number of jurisdictional gaps impeded the effective exercise of criminal jurisdiction with respect to offences committed by United Nations officials on mission. Primary responsibility in that regard lay with the host State. However, where the host State was not in a position to exercise its jurisdiction, another State or States should be able to take action, in particular the State of nationality of the perpetrator. At the same time, due process and the basic rights of the accused must be respected in such cases.

98. The crimes for which perpetrators could be held accountable should not be limited to those committed against persons, whether of a sexual or other nature. Accountability should extend to all crimes of a certain degree of seriousness committed by officials on mission.

99. The purpose of a future convention would be fulfilled only if an appropriate formula was established for the lifting of the immunity of United Nations officials where a crime was found to have been committed. Any such formula must balance all the interests involved. Preparatory work would be required in order to clarify the content and objectives of a future

convention. Pending the adoption of a convention, his delegation supported the short-term measures set out in document A/62/329 to address the current jurisdictional gap. No instrument or measure consistent with the Charter and international law should be ruled out in efforts to ensure the accountability of officials on mission.

*The meeting rose at 1 p.m.*